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Chairman: Mr. Rachkov (Vice-Chairman) ..... (Belarus)
later: Mr. Al Bayati (Chairman) ..... (Iraq)

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In the absence of Mr. Al Bayati (Iraq), Mr. Rachkov (Belarus), Vice-Chairman, took the Chair.

The meeting was called to order at 10.10 a.m.

Agenda item 67: Promotion and protection of human rights (*continued*) (A/61/36, 97, 220 and 280)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/61/211, 267, 281, 287, 289, 306, 311, 312, 324, 325, 338, 340, 348, 352, 353, 384, 464, 465, 476, 506 and 513)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/61/276, 349, 360, 369 and Corr.1, 374, 469, 470, 475, 489, 504 and 526)

1. **Mr. Scheinin** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism), introducing his report (A/61/267), said that there was growing support for the position that human rights did not compromise the fight against terrorism, but rather, were a cornerstone of any successful strategy against terrorism, an approach reflected in the Global Counter-Terrorism Strategy recently adopted by the General Assembly in resolution 60/288. Its Plan of Action contained as its fourth main pillar measures to ensure respect for human rights and the rule of law as the basis of the fight against terrorism. Human rights also figured as a component in all the other pillars, especially the first pillar on measures to address the conditions conducive to the spread of terrorism. Violations of human rights, ethnic and religious discrimination, political exclusion and socio-economic marginalization were identified among such conditions; it was emphasized, however, that none of those conditions could justify acts of terrorism, which were morally and legally inexcusable, whatever the soil from which they grew and whatever cause they claimed to further.

2. Besides participating in the Secretary-General's Counter-Terrorism Implementation Task Force, he had had contacts with other relevant bodies in the United Nations system and regional associations.

3. The main theme of his report was the impact of counter-terrorism measures on the right to freedom of association and peaceful assembly. The issue of listing and de-listing of terrorist groups was addressed in that context. The rights of peaceful assembly and freedom of association were protected by international treaties, including articles 21 and 22 of the International Covenant on Civil and Political Rights. Those rights could be seen as a platform for the exercise of other rights, including the right to freedom of expression, cultural rights and the right to political participation. They were also crucial to the work of human rights defenders and for the creation of non-governmental organizations and political parties. Nevertheless, associations and organizations were sometimes used as a means to carry out terrorist acts and transfer or use funds for terrorism.

4. He called for increased attention to those rights in the context of ensuring that counter-terrorism measures conformed to human rights standards. It was his position that States should not resort to derogation from their obligations in that area, and that limitation measures provided by the Covenant were sufficient in fighting terrorism. Such limitations must be demonstrated to be necessary and proportionate, and subject to judicial safeguards. In order to clarify the applicable legal standards, he would recommend that the Human Rights Committee should adopt a general comment on the rights to freedom of association and to peaceful assembly.

5. As to the listing and de-listing of entities as part of the sanctions regime against terrorism, he once again emphasized the need for clear and precise definitions of terrorism and terrorist acts on the international and national level. Further, listing of entities as terrorist should be a temporary measure, in order not to amount to a criminal sanction, and entities so listed must have recourse to adequate safeguards, including judicial review. Sanctions regimes that incorporated human rights guarantees were in the long run more efficient tools against terrorism than arrangements falling short of international standards.

6. His mandate also encompassed proactive and positive dimensions, such as identification, compilation and dissemination of best practices in the fight against terrorism. He regretted that broad support of Governments for his mandate did not always translate into rapid responses to his communications or invitations to visit a country. He thus wished to thank the Government of Turkey for the exemplary manner in which it had facilitated his mission in February 2006.

7. The thematic sections of his forthcoming report to the Human Rights Council would deal with racial or ethnic profiling in the context of countering terrorism, and with suicide attacks as a specific challenge. In the current world order, preventing and combating terrorism continued to be a priority for all States. In response to that threat, many States had introduced new legislation or had amended existing legislation, and the implementation of some of those laws might indeed violate the rule of law and undermine human rights. Secret places of detention, rendition flights, racial profiling and the targeting of minorities, refugees and asylum-seekers were just a few examples of the negative impact of counter-terrorism measures on human rights. In addition, fair-trial standards were under threat in many parts of the world. He asked Governments, at a time of continued uncertainty, to welcome the proactive and cooperative elements of his mandate in order to work together to identify effective counter-terrorism measures which reinforced and promoted human rights of all persons, including the victims of terrorism.

8. **Mr. Tornudd** (Finland), speaking on behalf of the European Union, noted that human rights defenders had faced difficulties regarding freedom of assembly in connection with counter-terrorism measures, and asked if there were any plans for joint efforts with the Special Representative of the Secretary-General on the situation of human rights defenders. With regard to the registration or listing of individuals and groups by sanctions committees, international provisions to allow such groups to contest their inclusion did not yet exist, and he wondered if the Special Rapporteur would contribute to the work on guidelines in that area being done by the Al-Qaida and Taliban Sanctions Committee. His comments on national systems for judicial review of such listings and best practices would be welcome.

9. **Ms. Fontana** (Switzerland) said that her delegation shared the concerns expressed regarding potential infringement of rights through listing and de-listing of individuals and groups, and questioned whether listing was truly provisional, as the listings seemed to continue indefinitely. Particularly in cases involving freezing of assets, that could amount to confiscation. She would like to hear his views on the format United Nations mechanisms in that area should follow.

10. **Ms. de Pirro** (United States of America) said that, while her delegation agreed that a strong response to those who committed acts of terrorist violence was imperative, that response must also respect the rule of law. It noted with concern actions by some countries to justify repressive internal measures on the grounds of combating terrorism. However, her delegation wondered whether certain areas of action the Special Rapporteur suggested were sufficiently central to his mandate to justify spending precious time and resources on them. For example, in undertaking to develop a single definition of terrorism, it would be difficult to avoid a rehash of the thousands of hours of debate that had impeded other efforts to develop a definition. Another example was the exploration of "root causes", which, while very important, would be a distraction from the heart of the mandate, and could lead to a loss of focus.

11. **Mr. Cumberbatch Miguén** (Cuba) asked for more information on the elements to be included in the report to the Human Rights Council on ethnic profiling and on the criteria used to analyse laws restricting human rights. He would also like to know more about the denial of bilateral cooperation in countering terrorism.

12. **Mr. Aksen** (Turkey), on the subject of root causes of terrorism, asked how to avoid crossing the thin line between determining root causes and making excuses for terrorism.

13. **Mr. Babadoudou** (Benin) said that he was concerned at the dimension of the mandate, which appeared to call the entire counter-terrorism system into question. He would like to know how the failure to define terrorism affected the work of the Special Rapporteur.

14. **Ms. Feller** (Mexico) said that her delegation would like to know how anti-terrorism measures had impacted religious, ethnic and racial minorities and whether he had discovered any best practices that could improve the situation. She would also like to hear more about any experiences in cooperation between civil society and government.

15. **Mr. Kim** Pil-woo (Republic of Korea) said that his delegation agreed with the Special Rapporteur on the need for a clear definition of terrorism, as the lack of a definition could allow some Governments to justify measures that were detrimental to human rights

as being necessary to combat terrorism. Thus the term should be given a specific and concrete meaning.

16. **Mr. Scheinin** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism), in reply to the representative of Finland, said that he was cooperating with the mandate of the Special Representative of the Secretary-General on human rights defenders both within the Office of the High Commissioner for Human Rights and personally, as their mandates were complementary. Both his mandate and that of the Al-Qaida and Taliban Sanctions Committee were represented on the Counter-Terrorism Implementation Task Force and they cooperated regularly. With regard to questions on listing and de-listing of individuals and groups raised by the representative of Switzerland, observing the principle that such listing was temporary would help to improve the system, as that would require a review of the lists at regular intervals, perhaps every 6 to 12 months. Provision for individual review would not necessarily be judicial on the international level.

17. On the subject of defining terrorism and root causes, the primary focus of his mandate was indeed on the impact of counter-terrorism measures on individuals, but a broader approach was also useful. An exploration of conditions conducive to the spread of terrorism suggested elements of prevention. The lack of an agreed definition of terrorism, furthermore, was one of the reasons why the human rights issues had arisen. As long as countries could define terrorism however they wished, abuses could occur. In his view, a definition should be based on the choice of tactics, including violence against innocent bystanders.

18. Responding to the representative of Cuba, he said that his report to the Human Rights Council on profiling would cover its foundations, initial elements and normative criteria under international human rights law, the International Convention on the Elimination of All Forms of Racial Discrimination and other non-discrimination procedures. He would also suggest a possible model for profiling based on the conduct rather than the characteristics of an individual.

19. In reply to the representative of Turkey, he said long-term efforts at prevention must result from studying the root causes of terrorism, and a clear definition would help to prevent them from being used as a justification for such acts.

20. He assured the representative of Benin that his intention was not to challenge the sanctions regime as a whole, but to improve an imperfect system through such tactics as "smart" sanctions. He also pointed out that, after the adoption of Security Council resolution 1373 (2001), on countering terrorism, all resolutions had contained a provision that any measures taken by Member States must comply with human rights norms.

21. A definition of terrorism was important in avoiding abuse of minorities and indigenous groups, as the representative of Mexico had noted. In his view, indigenous movements would not quality as terrorist groups unless they targeted civilians.

22. **Ms. Ertürk** (Special Rapporteur on violence against women, its causes and consequences) said that her last thematic report to the Commission on Human Rights (E/CN.4/2006/61 and Add.2-5), which she had also presented to the Human Rights Council, had focused on the potential of the due diligence standard as a tool for the implementation of human rights, including women's right to a life free from violence. Conventionally, violence against women had been interpreted largely within a welfare/humanitarian context. There had been less systematic work done on the more general obligation of preventing violence, particularly by supporting women's empowerment and eradicating patriarchal norms that subordinated women. Owing to the exclusively State-centric nature of the due diligence obligation and changing power dynamics, the challenges posed for State authorities, as well as new questions they raised about the accountability of non-State actors, had been largely overlooked.

23. From a human rights perspective, the current challenge in combating violence against women was to ensure that the root causes and consequences were tackled at all levels, from the home to the transnational arena. Applying a human rights perspective had challenged the taken-for-granted aspects of everyday life. As a result, the focus had shifted from the earlier victimization-oriented approach to one of empowerment. A life free of violence was accepted as an entitlement rather than merely a humanitarian concern. Identifying the rights bearer also brought with it a focus on the duty bearer with respect to responding to violence. In addition to the focus on empowerment, the cultural negotiation approach was also effective.

24. There was a need to broaden the understanding of the due diligence obligation beyond individual States. That might require new mechanisms and the adoption of legally binding international codes of conduct for non-State actors with a transnational reach. In responding to transnational challenges such as the trafficking of women or the regulation of migration and refugees, the community of States needed to work together and develop innovative transnational strategies.

25. In the course of 2006, she had conducted missions to Turkey, Sweden and the Netherlands; she would report on those missions in 2007. Her reports concerning her missions to the Russian Federation, the Islamic Republic of Iran, Mexico and Afghanistan were contained in documents E/CN.4/2006/61/Add.2-5.

26. In the Russian Federation, which she had visited in December 2004, the political and economic transition had disproportionately burdened women. The revival of archaic notions of gender relations seemed to be serving to justify gender inequality and widespread violence against women. There were continuing reports of acts of violence against women in the Chechen Republic. The Russian Federation had a historical legacy in the promotion of women's rights and a well-developed State tradition which would enable it to address violence against women if the Government were to prioritize women's rights. The creation, in June 2006, of an Inter-Ministerial Commission on the Promotion of Equality of Men and Women was a promising development.

27. Early in 2005, she had visited the Islamic Republic of Iran. Although the principle of equality was enshrined in the Constitution, and women's access to education was commendable, gender inequality was a salient feature of society which was upheld and perpetuated by patriarchal values and attitudes and State-promoted institutional structures based on gender-biased and hard-line interpretations of religious principles. Certain recent amendments to the law concerning child custody and the minimum age of marriage were promising steps. However, those needed to be followed by a comprehensive review and reform of discriminatory legal provisions. Corporal punishments such as stoning and flogging must be outlawed; in the meantime, she had urged the authorities to uphold the moratorium on execution by stoning, as the courts continued to sentence women to death by stoning.

28. In February 2005, she had visited Mexico, where the high levels of violence against women were both a consequence and a symptom of widespread gender discrimination and inequality. The Government of Mexico was party to the major human rights treaties that provided women with protection against violence and had taken important steps to fulfil those obligations. However, it needed to take drastic measures to address the inadequate coordination between federal and state levels with regard to violence against women and to make the police and justice sectors more responsive. The problem had become particularly visible in the State of Chihuahua, where between 1993 and 2005, almost 400 women had been murdered in Ciudad Juárez alone.

29. In July 2005, she had visited Afghanistan, where severe violence against women was pervasive. Underlying factors included the hard-line patriarchal gender order, the erosion of protective social mechanisms, a weak judiciary, a lack of law enforcement, and widespread discriminatory practices combined with poverty and insecurity. Women and girls must be protected from violence as a matter of urgency, especially by ending child and forced marriages and providing safe houses for women and girls who had escaped from violence and had no other alternatives.

30. Regional consultations with non-governmental organizations had become an integral aspect of her work. In 2006, she had attended a regional consultation organized by the Asia Pacific Forum on Women, Law and Development, in Ulaanbaatar, Mongolia. She encouraged civil society actors to continue to organize and participate in such constructive initiatives, and she urged Member States to provide funds for that purpose. The consultation had dealt with the topic of her next thematic report to the Human Rights Council, namely, the intersection of culture-based discourses and violence against women. The challenge was to respect and prize diverse cultures while developing common strategies to resist oppressive practices in the name of culture.

31. The mission to Algeria which she had scheduled for January 2006 had been postponed on short notice at the request of the Government. However, she had received assurances that the mission could take place in early 2007. She had renewed her request to visit the Democratic Republic of the Congo and had also requested to carry out official missions to Ghana and

Saudi Arabia in 2007. In addition, she had taken up an invitation from the Government of Zimbabwe.

32. **Mr. Tornudd** (Finland), speaking on behalf of the European Union, said that the European Union was submitting a draft resolution on the Secretary-General's in-depth study on all forms of violence against women (A/61/122/Add.1). He would be interested to hear the views of the Special Rapporteur on that matter. In the study, States and the United Nations were called on to strengthen the knowledge base on all forms of violence against women. He asked what such a database should look like.

33. He would also like to hear the Special Rapporteur's views on how multinational corporations and the international community could contribute towards making transformative changes in the fight to eliminate violence against women. Finally, how could the cultural-negotiation approach best be organized in order to touch upon the private sphere, including through interventions targeting men?

34. **Mr. Aksen** (Turkey) asked the Special Rapporteur to elaborate on the concept of cultural negotiation and explain what elements it might include. Also, he would like to hear specific proposals on how different bodies and mechanisms could cooperate in the struggle to eliminate violence against women and empower them.

35. **Mr. Zamani** (Islamic Republic of Iran) pointed out that the entire system of justice in his country was based on the Constitution and derived from the Islamic sharia, which enjoyed the support of the people. It was not useful to analyse the situation in the Islamic Republic or in any other society without taking into consideration its internationally recognized multiculturalism and diversity. His Government would bear that in mind in considering the recommendation of the Special Rapporteur.

36. **Ms. Sapag** (Chile) asked the Special Rapporteur whether she had received any feedback from the United Nations International Research and Training Institute for the Advancement of Women (INSTRAW) concerning its research in Mexico and other countries in Latin America. She would also appreciate her views and recommendations on shelters or safe houses, inasmuch as her Government was undertaking to establish such facilities in different regions of the country.

37. **Ms. Walker** (Canada) stressed the importance of effective data collection and analysis. Considering that gender-based violence was often hidden from public view, she would like to know the most effective ways to collect and analyse data on that issue.

38. **Ms. Feller** (Mexico) asked what steps should be taken to develop statistics and indicators to monitor interventions on violence against women. In particular, the systematic murder of women in Mexico and other countries was a growing problem that had not been sufficiently discussed at the multilateral level.

39. **Ms. Dlamini** (Swaziland) asked what could be done to involve men in combating violence against women.

40. *Mr. Al Bayati (Chairman) took the Chair.*

41. **Ms. Thornton** (New Zealand) said that States required guidance on how to implement the due diligence standard, given the potential scope of the concept and role of non-State actors. How could States best use the current opportunity provided by the Special Rapporteur's report to advance the elimination of violence against women? What should be the focus? Also, bearing in mind that the General Assembly would shortly adopt a comprehensive convention on the rights of persons with disabilities, she would appreciate any comments the Special Rapporteur might have on the situation of women with disabilities.

42. **Mr. Alakhder** (Libyan Arab Jamahiriya) asked whether the mandate of the Special Rapporteur covered cases of violence against women in occupied territories. Was such violence important? Was the crime of rape included as a crime against women in territories under foreign occupation?

43. **Ms. Kalamorna** (Zambia), noting that neither legislation nor policies had succeeded in reducing violence against women, asked what was the best approach or strategy to follow in order to combat acts of violence.

44. **Mr. Cumberbatch Miguén** (Cuba) stressed the importance of repealing discriminatory laws and of changing cultural practices that promoted violence against women. Efforts to empower women and improve gender equality had not sufficiently taken into account the need to promote the economic, social and cultural rights of women. He wondered what could be done to address that aspect.

45. **Ms. Ertürk** (Special Rapporteur on violence against women, its causes and consequences), replying

to questions, said that violence against women was not an isolated issue. It was related to the overall status of women. Therefore, combating violence against women would require the full implementation of the Beijing Platform for Action.

46. The issue of violence was difficult to capture in statistics. She was conducting a study on how best to document violence against women, which would be shared with the international community when it was ready. INSTRAW had the potential to serve as a knowledge clearing house within the United Nations on gender issues.

47. Regarding the role of men, change should not be limited to the rehabilitation of violent men. The problem was not violent men, but gender ideology. Many problems experienced by women were caused by taboos regarded as part of the culture. It was a disservice to a culture to assume that the taboos in question were inherently part of it. Leaders had the power to either empower patriarchy or empower rights. They had the responsibility to urge those who engaged in violence to question themselves.

48. In order to link the work of the Special Rapporteur with the Secretary-General's study on violence against women, there was a proposal for the Special Rapporteur to report to the Committee on the Status of Women. There was interest within that body in creating a mandate to study discriminatory laws.

49. In reference to the question of Islamic sharia, a broad approach was the most effective one, since violence against women was a universal problem. Particular religious texts were not being challenged. The question was how to handle such texts in a way that provided maximum protection for women. Practices claiming the same textual sources were often implemented differently. Countries dealt with the issue by reinterpreting texts.

50. There was still a great deal to be done in the Islamic Republic of Iran. The situation of women there had changed, but legal provisions needed to reflect that.

51. The issues of femicide in Mexico and other countries would be addressed by the work on indicators.

52. Violence against women in territories under occupation was most certainly a human rights violation. Rape had recently been declared a crime against humanity.

53. The problems associated with disabilities emanated not from the disabled but from societies which did not provide infrastructure for them. It was necessary to design societies which took into account alternative needs.

54. **Mr. Mudho** (Independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights), introducing his report (A/61/464), said that the Multilateral Debt Relief Initiative would provide a benefit of US$ 50 billion, spread over a period of 40 years. The amount was too small to have a measurable impact on the achievement of the Millennium Development Goals. So far, only 20 countries qualified for the debt cancellation, while 20 more countries might still meet the admission criteria in the future. The Initiative was limited to three multilateral banks; other banks were not participating, owing to the failure of donors to commit resources to compensate the banks for debt relief.

55. It was important that debt relief should supplement existing and future development aid so that the positive effects were not offset by a reduction in traditional cooperation programmes. In lending to developing countries, the principle of shared responsibility of lenders and borrowers should be recognized. Creditors should take the debt situation of poor countries into account and adapt the mix of loans and grants provided accordingly. Each country bore primary responsibility for its own development and for the full realization of human rights. Millennium Development Goal No. 8 on global partnership for development, which called for a rule-based trading and financial system, was of particular importance.

56. The general guidelines which he was elaborating pursuant to Commission on Human Rights resolution 2005/19 were intended to be followed by States and by private and public, national and international financial institutions to ensure that compliance with commitments did not undermine the realization of fundamental economic, social and cultural rights. Since the elaboration of the guidelines would require further reflection on the sustainable level of debt for a country, an extension of the time frame for the elaboration of the guidelines had been recommended.

The meeting rose at 12.25 p.m.